IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.955 OF 2005

Salim Haidar Bepari	...	Petitioner
Vs.		
Fariddin Shiraj Khalipha (Bepari) & Ors.	...	Respondents

Mr. S.M. Oak for the petitioner.

Mr. G.S. Godbole for respondents 2 and 3.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH APRIL, 2005.

P.C.:-

1. The petitioner is the original tenant. The respondents-landlords filed a suit being R.C.S. Suit No.207 of 1993 in the court of Civil Judge, Junior Division, Miraj, for recovery of possession of the suit premises on the ground that the suit premises are in a dangerous and dilapidated condition. The suit was filed under section 13(1)(hhh) of the Bombay Rent Act. After considering the evidence led by the parties, the trial court held that the suit premises are in a dangerous and dilapidated condition. The suit was decreed. In an appeal carried from the said judgment and decree, the lower appellate court confirmed the said finding and, hence, this writ petition.

2. I have heard, at some length, Mr. Oak, the learned

counsel appearing for the petitioner. He contended that the entire building is in a dangerous and dilapidated condition. The landlords cannot approbate and reprobate. They should have themselves vacated the suit premises. I cannot accept this submission. In a suit filed by the landlord, the tenant cannot ask the landlord to vacate. The findings recorded by the trial court and the lower appellate court are unassailable. No interference is called for with the impugned judgment and decree. Hence, the petition is rejected.

3. At this stage, Mr. Oak, the learned counsel for the petitioner states that some time may be granted to the petitioner to vacate the suit premises. He asks for one year's time. Mr. Godbole, the learned counsel for the respondents objects. In the facts and circumstances of the case, the petitioner is given six months' time on the petitioner and all adult members of his family filing usual undertakings to this court to the effect that they will not sell, assign and transfer the suit premises or alienate or encumber the suit premises or create any third party rights in the suit premises or induct any one in the suit premises and after expiry of the period of six months, they shall hand over vacant, peaceful and unencumbered possession of the suit premises to the respondents. Such undertakings be filed in this court within a period of five weeks from today.

(SMT. RANJANA DESAI, J.)